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 19 Bernard "Skip" Whalen Area Local #71

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 22 UNITED STATES DISTRICT COURT  
 23 NORTHERN DISTRICT OF CALIFORNIA  
 24 SAN JOSE DIVISION

25 KENNETH G. FLOYD,  
 26 Plaintiff,  
 27 v.  
 28 BERNARD "SKIP" WHALEN AREA  
 LOCAL, AMERICAN POSTAL WORKER  
 UNION LOCAL #71,  
 Defendant.

CASE NO.:

CV 07

5993

HRL  
 NOTICE OF REMOVAL OF THE  
 BERNARD "SKIP" WHALEN AREA  
 LOCAL, AMERICAN POSTAL  
 WORKERS UNION LOCAL #71

21  
 22 The Bernard "Skip" Whalen Area Local, American Postal Workers Union Local #71 (Local  
 23 Union) files this Notice of Removal of Civil Action No. 107CV094120 filed in the Superior Court,  
 24 County of Santa Clara, California, and in support thereof states the grounds for removal as follows:  
 25 1. A summons was received by an officer of the Local Union on or about October 28,  
 26 2007.  
 27 2. The Plaintiff was a former president and member of the Local Union. In his two causes  
 28 of action, the Plaintiff alleges that the Local Union owes him \$27,704.04 for expenses he incurred

1 while he was president of the Local Union. The Plaintiff also alleges that the Local Union owes him  
 2 \$6,544.44 for unused sick leave he accumulated while president of the Local Union.

3       3. The Local Union and the American Postal Workers Union, AFL-CIO (APWU) are  
 4 labor organizations within the meaning of the Labor Management Relations Act (LMRA), 29 U.S.C.  
 5 § 152(5) (2007). The Local Union is chartered by the APWU. The APWU and its chartered local  
 6 unions represent employees of the United States Postal Service and the private sector mail industry.

7       4. The conduct of the Local Union is governed by the constitution and by-laws of the  
 8 APWU (APWU Constitution), and the constitution and by-laws of the Local Union (Local  
 9 Constitution) which must be consistent with the APWU Constitution. The expenditure of Local  
 10 Union funds and the compensation of Local Union officers is generally determined by the Local  
 11 Constitution. To the extent that the Local's Constitution is silent on an issue or contradicts the  
 12 APWU Constitution, the APWU Constitution applies.

13       5. Article 15 of the APWU Constitution states:

14           The following shall constitute offenses, the commission of which shall subject any  
 15 officer or member of the American Postal Workers Union, or of any subordinate  
 body of APWU, or a subordinate body itself, to disciplinary action as set forth herein:

16           SEC. 1. (a) Violating any provision of the Constitution or Bylaws of the APWU or  
 17 of a subordinate body, or failure to perform duties or functions specified or required  
 therein.

18       6. In claiming that the Local Union failed to reimburse him for Local Union expenses that  
 19 he incurred while president of the Local Union, and in claiming that the Local Union denied him  
 20 compensation for unused accumulated sick leave while president of the Local Union, the Plaintiff is  
 21 making a federal question claim because he is claiming that the Local Union breached both the  
 22 Local Constitution and the APWU Constitution.

23       7. A cause of action by a union member to enforce a union constitution is considered to be  
 24 a suit to enforce a contract between labor organizations which is governed exclusively by federal  
 25 law. See Wooddell v. Intl. Bhd. of Elec. Workers, 502 U.S. 93, 98-99 (1991).

26       8. This Court has jurisdiction over the claims that the Plaintiff asserts against the Local  
 27 Union under Section 301(a) of the LMRA, 29 U.S.C. § 185, and under Section 1208(b) of the Postal  
 28

1 Reorganization Act (PRA), 39 U.S.C. § 1208(b).<sup>1</sup> Federal district courts have jurisdiction over any  
 2 cause of action that concerns a violation of a contract between unions, including a union  
 3 constitution. Section 301(a) of the LMRA states:

4 Suits for violation of contracts between an employer and a labor organization  
 5 representing employees in an industry affecting commerce as defined by this chapter,  
 6 or between any such labor organizations, may be brought in any district court of the United  
 7 States having jurisdiction of the parties, without respect to the amount in controversy or  
 8 without regard to the citizenship of the parties.

9 Section 1208(b) of the PRA states:

10 Suits for violation of contracts between the Postal Service and a labor organization  
 11 representing Postal Service employees, or between any such labor organizations, may be  
 12 brought in any district court of the United States having jurisdiction of the parties, without  
 13 respect to the amount in controversy.

14 9. Accordingly, this Court has original jurisdiction over Plaintiff's causes of action  
 15 against the Local Union and removal of the actions to this Court is proper pursuant to 28 U.S.C. §  
 16 1441(b).

17 10. True copies of all pleadings filed in this case are attached hereto as Exhibit A.

18 The Bernard "Skip" Whalen Area Local, American Postal Workers Union Local #71 hereby  
 19 removes Civil Action No. 107CV094120 filed in the Superior Court, County of Santa Clara,  
 20 California, to this Court.

21 Dated: November 27, 2007

Respectfully submitted,

22 ALTSHULER BERZON LLP

23 By: \_\_\_\_\_

24 Jonathan Weissglass

25 \_\_\_\_\_

26 1 Although all public employees are expressly exempted from the Labor Management Relations  
 27 Act (LMRA), 29 U.S.C. § 152 (2), courts have held that case law developed under Section 301 of  
 the LMRA, 29 U.S.C. § 185, is equally applicable to actions brought by Postal Service employees  
 under Section 1208(b). Johnson v. United States Postal Service, 756 F.2d 1461, 1465 (9th Cir.  
 28 1985) ("Because [39 U.S.C. Section 1208] is essentially identical to Section 301 of the National  
 Labor Relations Act, Bowen v. United States Postal Service, 459 U.S. 212 232 n.1 (1983), we may  
 properly rely on Section 301 cases for guidance.").

1 O'DONNELL, SCHWARTZ & ANDERSON, P.C.  
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3 By: Daniel B. Smith  
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6 Attorneys for Bernard "Skip" Whalen Area Local,  
7 American Postal Workers Union Local #71  
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1                   **CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

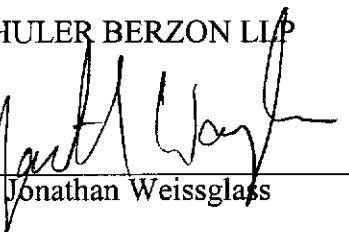
2                   Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the  
3 named parties, there is no such interest to report.

4

5 Dated: November 27, 2007

ALTSCHULER BERZON LLP

6 By:

  
Jonathan Weissglass

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9 By:

  
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12 American Postal Workers Union Local #71

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